Members of the Board of Appeals:

I represent Anthony Benincasa in connection with his appeal from the CEO's determination that Barry Balach may use a Recreational Vehicle parked on his ½ acre lot, which is already improved with a single family dwelling, as yet another dwelling unit, so long as Mr. Balach drives the vehicle off the lot every 30th day. Section 10 B of the Town's Building and Land Use Ordinance provides that, "Recreational Vehicles used as dwelling units on a lot for more than 30 days must obtain a construction permit." You have already received numerous well reasoned letters from citizens of Lamoine, especially from those living nearby to Mr. Balach, expressing concern, but more importantly explaining quite clearly why the CEO's decision is wrong. Candidly, I can't improve on those letters, so I will simply offer a view of the way I think the Board is to approach a question like this and ask you to apply the Maine Supreme Court's mandated rationale to this situation. If the Board does that, it will be incumbent upon it to reverse the CEO's decision and to order that under Section 10B of the Ordinance, a Recreational Vehicle can be used as a dwelling for only 30 days in a calendar year. It cannot be used as a dwelling for 353 days a year by simply driving it off the lot once every thirty days. The Board's interpretation of the Ordinance should be guided as follows:

Section 10B is not ambiguous. It prohibits using a Recreational Vehicle as a dwelling unit for more than 30 days without obtaining a construction permit. A zoning ordinance must be interpreted pursuant to its plain language. See, Jade Realty Corp. v. Town of Eliot, 2008 ME 80, 946 A.2d 408.

An undefined term, such as 30 days should be given its common and generally accepted meaning unless the context clearly indicates otherwise. See George D. Ballard Builder, Inc v. Westbrook502 A2.2d 476, 480 (Me. 1985). In this instance, the CEO has, without any authority whatsoever, imported the concept of "consecutive" days when deciding that Mr. Balach's arrangement is lawful. There is no support in common law for that type of action or interpretation by the CEO.

An ordinance must be construed reasonably in light of the purposes and objectives of the ordinance. See Rudolph v. Golick, 2010 ME 106, 8 A.3d 684. In this instance ,the stated purpose of the Ordinance , Section 2, is to provide for the safety, health, and public welfare by regulating construction, expansion, conversion to a different use, relocation, or replacement of buildings, trailers, RECREATIONAL VEHICLES, and/or manufactured homes or significant segments thereof. Plainly, the notion of limiting RV use for dwelling purposes to 30 days in one year, as opposed to more than 350 days per if you simply drive it off the lot every thirtieth day, is consistent with the purpose of the ordinance. Plainly, as well, the CEO's interpretation is inconsistent with the stated purpose of the ordinance.

A second issue on appeal is the Planning Board's after the fact granting of a waiver from the mandate of Section 5 C which limits each lot to a single driveway or curb cut. Mr. Balach built a second curb cut accessing his single family residential lot for the sole purpose of getting his recreational vehicle onto the lot. Our objection to this second curb cut is less vociferous than our objection to the limitless use of the recreational vehicle as a second dwelling on the property, yet it becomes necessary to Mr. Balach solely because of the CEO's determination that his lot can be the site of a second dwelling, namely an RV.

As a matter of law, a zoning ordinance must set forth standards by which those who administer it can determine whether a proposal may be approved. In this instance, the Ordinance fails to do that. Section 5 C simply says "Each lot shall be accessed by no more than one curb cut, UNLESS A WAIVER IS GRANTED BY THE PLANNING BOARD. As such the ordinance improperly vests the planning

board with a “standardless delegation of authority.” Essentially, while a waiver from certain standards is a permissible thing to do, in this ordinance the standards by which a waiver may be granted are not spelled out, so the ordinance provision is invalid. I just happened to be doing work for the City of Ellsworth on this issue this week, so I am aware of the treatment of waivers in its Land Development Code. A valid provision such as the City’s puts limits upon the board’s authority to grant or deny requests for waivers from requirements otherwise imposed by the ordinance. For instance in Ellsworth’s ordinance, a waiver may be granted from road construction requirements only if it will not result in more adverse impact on public safety than existing conditions and will not adversely affect abutting landowners or the general public. Those standards are set forth in the ordinance.

We are not saying the Planning Board didn’t evaluate this request for a waiver responsibly, rather we argue, and it seems quite clear, that the waiver provision in this section of the ordinance is a standardless delegation of authority and therefore invalid. This ordinance creates two constitutional problems. It violates a party’s equal protection and due process rights because it doesn’t give sufficient notice of the requirements to be met and it doesn’t guarantee that every applicant will subject to the same requirements. It amounts to substituting the planning board’s judgment for the legislative body (town meeting).

For the foregoing reasons, the CEO’s and Planning Board’s actions should be reversed.